



Testimony of

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Before the

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Innovation Technology**

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Good afternoon, Chairman Rothfus, Chairman Singh and members of the Committee. My name is John Breyault and I am the Vice President of Public Policy, Telecommunications and Fraud at the National Consumers League. Founded in 1899, NCL is America's pioneering consumer advocacy organization. Our non-profit mission is to advocate for consumers and workers in the United States and abroad.¹

I appreciate the opportunity to speak with you today about the importance of robust consumer protection in the context of automatically renewing subscriptions and free trials, and the benefits of regulations like the Federal Trade Commission's ("FTC") recently finalized Negative Option Rule, sometimes referred to as the "Click to Cancel" rule.² Given this committee's focus on blockchain, fintech, and digital innovation technology, examining how consumer protection intersects with evolving digital business models is particularly relevant.

For too long, consumers across the nation, including here in Wyoming, have experienced significant harm from negative option marketing practices, where a consumer's silence or failure to take affirmative action is interpreted as acceptance or continued acceptance of a charge for goods or services.

¹ For more information, visit <http://www.nclnet.org>

² Negative Option Rule, 89 Fed. Reg. No. 221 (November 15, 2024). An electronic copy may be viewed here: <https://www.govinfo.gov/content/pkg/FR-2024-11-15/pdf/2024-25534.pdf>.

The average American consumer spends more than \$1,000 per year on subscriptions for a multitude of services. A non-exhaustive list of things those subscriptions pay for includes video streaming, e-Commerce (e.g., Amazon Prime, Walmart+), big box store memberships, digital storage, and health club access.³ While consumers clearly benefit from access to many of these services, consumers often pay hundreds annually for unwanted subscriptions.⁴ A 2022 study by brand insights agency C+R research found 42% of consumers had forgotten they were still paying for a service they no longer used. The same study found that, on average, consumers underestimated what they spent on monthly subscriptions by \$133.⁵ Another study found unwanted automatic renewals cost consumers over \$1 billion each year nationally.⁶

The harm detailed above stems from a range of industry practices, including, but not limited to:

- **Hidden or Unclear Enrollment Terms, Especially with Free Trials:** Many consumers are unwittingly enrolled in subscriptions because the material terms, such as the recurring nature of charges, the cost, or cancellation deadlines, are not clearly and conspicuously disclosed. This is particularly prevalent with free trial conversion offers, where consumers provide credit card information upfront but the conversion to a paid subscription upon the trial's end is hidden in fine print or buried within lengthy contracts. Sellers may promise free trials or discounted products while hiding that consumers will be enrolled in costly memberships unless they cancel before the trial ends. Examples cited in enforcement actions include being automatically enrolled in membership clubs after accepting "free jewelry" offers without clear disclosure.⁷ This deception leads consumers to be charged for services they did not realize they signed up for or did not intend to keep.

³ Wolny, Nick. "'Subscription Creep' Is Real. Consumers Are Paying Over \$1,000 Each Year, CNET Survey Finds," *CNET*. (October 18, 2024) Online: <https://www.cnet.com/personal-finance/subscription-creep-is-real-consumers-are-paying-over-1000-each-year-cnet-survey-finds/>

⁴ 89 FR 90476. FN 373. <https://www.federalregister.gov/d/2024-25534/p-597>

⁵ C+R Research. "Subscription Service Statistics and Costs." (July 26, 2024) Online: <https://www.cresearch.com/blog/subscription-service-statistics-and-costs/>

⁶ Baker, Steve. "Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements," Better Business Bureau. (Dec. 13, 2018) Online: <https://www.bbb.org/article/investigations/18929-subscription-traps-and-deceptive-free-trials-scam-millions-with-misleading-ads-and-fake-celebrity-endorsements>.

⁷ New York State Office of the Attorney General, Pennsylvania Office of the Attorney General, & 24 other state attorneys general. (June 23, 2023). *Comment of 26 state attorneys general on the Federal Trade Commission's proposed amendments to the Negative Option Rule* [Letter]. Online: <https://www.attorneygeneral.gov/wp-content/uploads/2023/06/2023.06.23-Comment-of-26-State-AGs-Negative-Options-Rule-Filed.pdf>

- **Excessively Difficult or Impossible Cancellation Procedures:** Consumers frequently encounter unnecessary obstacles and burdensome procedures when attempting to cancel. These can include:
 - *Requiring cancellation methods that are much harder than signing up:* For instance, requiring consumers who signed up online to cancel in person, via physical mail like certified letters, or navigate lengthy phone calls when online cancellation should be available and at least as easy.
 - *Burdensome phone cancellations:* This involves long hold times, calls that are lengthier or more burdensome than the sign-up call, frequent disconnects, and aggressive upsells or attempts to "save" the subscriber. Sellers may require consumers to navigate multiple offers or dark patterns before allowing simple cancellation.
 - *Confusing online cancellation paths:* Consumers may be required to hunt for cancellation terms buried in fine print or deep within websites or be forced to interact with a live representative or chatbot to cancel even if they signed up online without such interaction.

These barriers often function to make cancellation difficult or too much trouble, trapping consumers in unwanted subscriptions.

- **Failure to Provide Reminders Leading to Unwanted Charges:** Without clear reminders of upcoming charges or renewal deadlines, consumers often forget about subscriptions, especially if they are not actively using the service. This results in consumers continuing to pay for services they no longer want or use for months or even years. The average consumer pays two-and-a-half times what they originally estimated on monthly subscriptions.⁸ Some consumers only discover these charges months later when reviewing bank statements.
- **Deceptive Misrepresentations and Omissions:** Sellers may make material misrepresentations or omit key facts about the negative option feature or the underlying product. This includes lying about the cost, the recurring nature of the charges, cancellation deadlines, or refund rights. Disclosures, even if present, may be buried in fine print or given only *after* charges have begun. This prevents consumers from having the information necessary to make informed decisions.

⁸ "Subscription Service Statistics and Costs," *C+R Research*, (May 18, 2022) Online: <https://www.crrresearch.com/blog/subscription-service-statistics-and-costs/>

These practices cause substantial consumer harm by trapping them into paying for services they do not want or did not realize they signed up for. State Attorneys General and consumer groups have documented these practices extensively, detailing abuses like lack of informed consent, unclear disclosures, failure to honor cancellation requests, and refusal to provide refunds.⁹ Honest businesses are also harmed as consumers may hesitate to sign up for legitimate subscription services due to fear of being trapped.

The FTC's Negative Option Rule, effective January 2025 with compliance required by May 2025, is a significant step towards addressing these issues. It does not prohibit recurring charges but aims to prevent the abuse associated with them. The rule establishes clear, enforceable requirements across all forms of negative option programs and media, including interactive electronic media. It also applies to business-to-business transactions, protecting small and medium-sized businesses as well as individual consumers.

The rule's core requirements are designed to enhance transparency and empower consumers:

- **Mandatory Disclosures:** Sellers must clearly and conspicuously disclose all material terms, including the cost, frequency of charges, their recurring nature, the deadlines to cancel, and how to cancel. These disclosures must appear immediately adjacent to where the consumer consents to the negative option feature.
- **Express Informed Consent:** Sellers must obtain the consumer's unambiguously affirmative consent to the negative option feature *separately* from any other part of the transaction *before* charging them.
- **Simple Cancellation:** Sellers must provide a simple mechanism for consumers to cancel and immediately stop recurring charges. This mechanism must be at least as easy to use as the method the consumer used to sign up, and available through the same medium. This directly addresses the "roach motel" scenario where getting in is easy, but getting out is difficult. The rule clarifies that if a consumer signed up online, they should be able to cancel online without having to interact with a live representative or chatbot.

⁹ 88 FR 24716. 2023-07035. (April 24, 2023) ("The Commission and states continue to bring cases regularly that challenge negative option practices, including more than 30 recent FTC cases. These matters involved a range of deceptive or unfair practices, including inadequate disclosures for 'free' offers and other products or services, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures. In addition, the Commission continues to receive thousands of complaints each year related to negative option marketing. These cases and the high volume of ongoing complaints suggests there is prevalent, unabated consumer harm in the marketplace.") Online: <https://www.federalregister.gov/d/2023-07035/p-56>

These requirements provide consumers with the information and control necessary to make informed decisions and avoid unwanted financial burdens. They also benefit honest businesses by creating a more level playing field, ensuring competition is based on quality and service rather than deceptive practices and hidden terms.

Importantly, the FTC rule explicitly states that its Negative Option Rule does not supersede state laws unless those laws are inconsistent with the federal rule. This means states are empowered to enact *even stronger* consumer protections than the federal baseline.

As Wyoming looks to foster innovation in blockchain, fintech, and digital technologies, ensuring strong consumer protection is paramount. Clear rules build consumer trust, which is essential for the growth and adoption of new digital services. By supporting and potentially enhancing protections against harmful negative option contracts, Wyoming can safeguard its citizens and businesses while promoting a healthy and trustworthy digital marketplace.

Thank you for your time and consideration. I would be happy to answer any questions.